

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN MITCHELL, JR.,

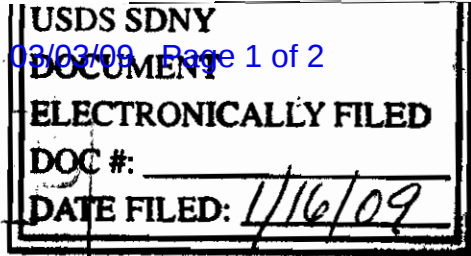
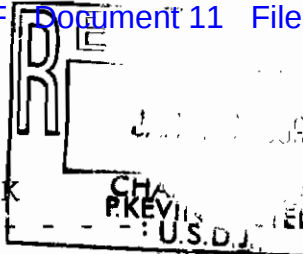
Plaintiff,

- against -

CITY OF NEW YORK, WARDEN ROBERT
SHAW, G.R.V.C.,

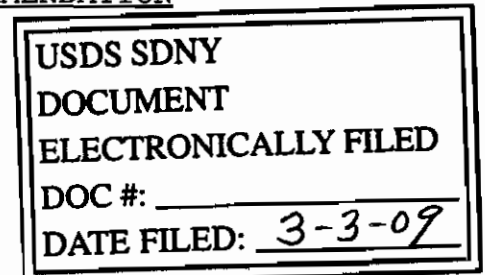
Defendants.

TO THE HONORABLE P. KEVIN CASTEL, U.S.D.J.:



: 08 Civ. 3783 (PKC) (JCF)

:
: REPORT AND
: RECOMMENDATION



The complaint in this action was filed on April 22, 2008, and service on the defendants was never effected. By letter dated October 15, 2008, I advised the plaintiff to submit within two weeks any reasons why the action should not be dismissed. When the plaintiff responded requesting an extension of time, I issued an order allowing him until December 12, 2008, but indicating that no further extensions would be permitted. (Memorandum Endorsement dated Nov. 6, 2008). In response to a further inquiry from the plaintiff, I reiterated that the December 12 date was final. (Memorandum Endorsement dated Nov. 19, 2008).

I am advised by the Pro Se Office of the Court that an amended summons and instructions for effecting service through the U.S. Marshals were delivered to the plaintiff by Federal Express on November 14, 2008. I am further advised that the United States Marshals Service has not received the necessary paperwork from the plaintiff since that time. Accordingly, service has not been effected.

I therefore recommend that the complaint be dismissed without

prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and (d) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable P. Kevin Castel, Room 2260, and to the chambers of the undersigned, Room 1960, 500 Pearl Street, New York, New York 10007. Failure to file timely objections will preclude appellate review.

Respectfully submitted,


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
January 15, 2009

Copies mailed this date to:

Benjamin Mitchell, Jr.
07-A-5226
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, New York 12953

I have reviewed de novo the Report and Recommendation and the record in which it is based. No objections have been filed and the time to file objections has expired. I adopt the Report and Recommendation. The action is DISMISSED. THE WRIT MUST BE ENTERED. THE CLERK SHALL SO MOTIONS AND MOTIONS ARE RECORDED. 3-3-09